

CHAPTER 65-10 APPEALS

65-10-01. Appeal from decision of organization. If the final action of the organization denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the organization allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides. An employer may also appeal a decision of the organization in any injury case or an organization decision issued under chapter 65-04, in the manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be heard on the record, transmitted from the organization, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal.

65-10-02. Determination by court - Judgment paid by organization. On appeal, the court shall determine the right of the claimant. If it determines the right in the claimant's favor, it shall fix the claimant's compensation within the limits prescribed in this title, and any final judgment so obtained shall be paid by the organization out of the fund in the same manner as awards are paid.

65-10-03. Cost of appeal and attorney's fee fixed by the organization. The organization shall pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney when the employee prevails. The employee has prevailed when any part of the decision of the organization is reversed and the employee receives an additional benefit as a result. An injured employee does not prevail on a remand for further action or proceedings unless the injured employee ultimately receives an additional benefit. The organization shall pay the attorney's fee from the organization's general fund. The amount of the attorney's fee must be determined in the same manner as prescribed by the organization for attorney's fees, and the amount of attorney's fee already allowed in administrative proceedings before the organization must be taken into consideration. The organization shall establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal. The maximum fee may be exceeded upon application of the injured employee to the organization, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex, but a court may not order that the maximum fee be exceeded. Notwithstanding the foregoing, the organization is liable for its costs on appeal if the decision of the organization is affirmed.